UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.4/429/Add.1
11 May 1990

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Forty-second session
Geneva, 1 May-20 July 1990

DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

Report of the Secretary-General

Addendum

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GE.90-61096/3426a

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AUSTRALIA

[Original: English]
[7 May 1990]

In reference to the Secretary-General's request for the views of members on the conclusions contained in paragraph 69 (c) (i) of the report of the International Law Commission on its thirty-fifth session, the Permanent Mission advises that, while conscious of the heavy workload of the Commission, Australia supports the continued consideration by the Commission of the proposal for an international tribunal to deal with crimes against the peace and security of mankind. Such a view is consistent with Australia's support for resolutions 44/32 and 44/39, our continuing endeavours to make the work of the Commission more timely and relevant and our recognition of the pressures imposed on the judicial systems of small States by major crimes such as international drug trafficking. The consideration of the practical difficulties implicit in the implementation of a proposed international tribunal would, in Australia's view, require the Commission to eventually consider the terms of any statute creating a competent international criminal jurisdiction for individuals. Australia therefore considers that the Commission's mandate should be understood as extending to the drafting of such a statute.

NIGERIA

[Original: English]
[25 April 1990]

With reference to the Secretary-General's note of 15 February 1990, in which he is seeking Nigeria's views regarding the conclusions contained in paragraph 69 (c) (i) of the report on the International Law Commission on the work of its thirty-fifth session, the following views are being forwarded:

> "Nigeria is of the view that it is rather premature at this stage for the International Law Commission to consider the preparation of a statute. There are still many issues which remain unsolved in the international criminal system relating to the definition of offences and penalties which would arise from such offences. The International Law Commission should speed up action so that the definition of offences in the draft code be completed in good time. As soon as the draft code is completed the question of a Statute for an International Criminal Tribunal for individuals could be deliberated on."

SINGAPORE

[Original: English]
[30 April 1990]

With reference to the Secretary-General's note dated 15 February 1990 inviting views regarding the conclusions contained in paragraph 69 (c) (i) of the report of the International Law Commission on the work of its thirty-fifth session, the Permanent Mission of Singapore wishes to inform the Office of the Secretary-General that the Government of Singapore supports the request of the International Law Commission that its mandate "... extends to the preparation of the statute of a competent international criminal jurisdiction for individuals". The Government of Singapore also holds the view that a code unaccompanied by penalties and by a competent criminal jurisdiction would be ineffective.

TRINIDAD AND TOBAGO

[Original: English]
[3 May 1990]

Views of the Government of the Republic of Trinidad and Tobago in response to General Assembly resolution 44/32 of 4 December 1989

Trinidad and Tobago has always supported the formulation and adoption by States of a code of crimes against the peace and security of mankind. A code, once accepted by States, would serve as an important international legal instrument and would enumerate the most dangerous crimes which shock the conscience of States and disrupt international peace and security.

Certain crimes have assumed a transnational character which unfortunately severely limits the effectiveness of States to combat these crimes when acting within the confines of their domestic jurisdictions. Acts of genocide, torture, crimes against diplomats, mercenarism, terrorism and the illicit traffic in narcotic drugs across international frontiers all pose grave threats to the integrity of States, and have the potential to undermine their stability, security and development.

The idea for the establishment of an international criminal jurisdiction and an international criminal court to deal with individuals accused of committing such crimes was, very broadly speaking, nurtured by scholars and non-governmental organizations until the Second World War. Following the

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establishment of the Nuremberg International Military Tribunal in 1946 it was envisaged that the jurisdiction of an international criminal court would cover individuals charged with violations of certain rules of international law, particularly in such fields as war crimes, genocide and other offences likely to disturb international peace.

Under the auspices of the General Assembly such a proposal was formalized in 1951 and revised in 1954 by the Committee on International Criminal Jurisdiction, established pursuant to General Assembly resolutions 489 (v) of 12 December 1950 and 687 (vii) of 5 December 1952. There followed, however, a period of inactivity brought about by the contents of General Assembly resolution 1187 (xii) of 11 November 1957 which recommended that consideration of an International Criminal Jurisdiction be deferred "until such time as the General Assembly takes up again the question of defindinq aggression and the question of a draft code of offences against the peace and security of mankind."

Trinidad and Tobago recognizes that the proposal for the establishment of an international criminal jurisdiction has been on the agenda of the International Law Commission in its drafting of a code of crimes against the peace and security of mankind.

In exercising its mandate, the Commission has successfully categorized and defined a number of crimes which disrupt international peace and security, such as aggression, apartheid, colonialism and war crimes. Trinidad and Tobago notes the recent submission by Mr. Doudou Thiam, Special Rapporteur for the topic "Draft Code of Crimes against the Peace and Security of Mankind", of the draft articles on the illicit trafficking in narcotic drugs and commends the Commission for its timely and positive response in the examination of this global problem.

Trinidad and Tobago firmly believes however that the elaboration of a code unaccompanied by penalties, by a competent jurisdiction and a court would not be effective. In order to ensure that the code is effective, it would be necessary to establish a mechanism for its implementation. It is in this regard that Trinidad and Tobago supports the establishment of a competent international criminal jurisdiction for individuals.

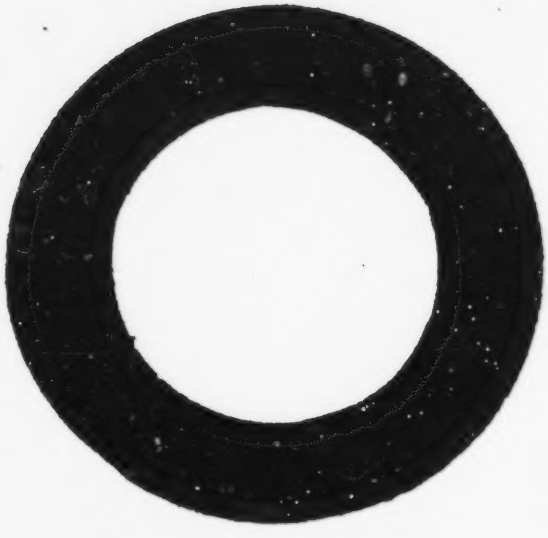
The judges of such a court would be appointed on the basis of their moral standing, their legal qualifications and their status as representatives of the world's legal systems. The jurisdiction of such a court, which would require the political support of States, would be derived from its own statute. The statute should seek to guarantee that body's objectivity and impartiality, and to ensure that a code of crimes against the peace and

security of mankind is less open to varying interpretations. The draft statute should also suggest the parameters of the court's jurisdiction and, in accordance with the United Nations Charter, should seek to ensure adherence to the principles of sovereignty and non-interference in the internal affairs of States Parties.

Trinidad and Tobago welcomes the submission of the "questionnaire-report" on the statute of an international criminal court prepared by Mr. Doudou Thiam, and contained in document A/CN.4/430/Add.1. The early publication of this addendum enables States to consider provisions which may be included in the statute of an international criminal court.

Trinidad and Tobago firmly believes that the international community should attach high priority to the useful and productive work of the International Law Commission on the formulation of the draft code, and to the proposals contained in the "questionnaire-report" on the statute of an international criminal court. The possible alternatives submitted in the latter document would not only facilitate the work of the Commission but would also assist States in their examination of the feasibility of and the merits for the establishment of an international criminal jurisdiction.

In this context, the Government of Trinidad and Tobago is of the view that, by way of facilitating the fullest possible consideration of the question of an international criminal jurisdiction, the International Law Commission could appoint either a special rapporteur or a working group to that end.



UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.4/429/Add.2
15 May 1990

ENGLISH
Original: SPANISH

INTERNATIONAL LAW COMMISSION
Forty-second session
Geneva, 1 May-20 July 1990

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REPLIES RECEIVED FROM GOVERNMENTS .....

Argentina .....

GE.90-61113/6320A

ARGENTINA

[Original: Spanish]
[23 April 1990]

... with regard to paragraph 3 of resolution 44/32, the Government of Argentina considers that it is too early for the Commission to discuss the question of the preparation of the statute of a competent international criminal jurisdiction for individuals. The consideration of that question should begin after agreement has been reached on the definition of offences and penalties under an international criminal law system.

UNITED
NATIONS

A

General Assembly

Distr.
GENERAL

A/CN.4/429/Add.3
21 May 1990

ENGLISH
Original: FRENCH

INTERNATIONAL LAW COMMISSION
Forty-second session
Geneva, 1 May-20 July 1990

DRAFT CODE OF CRIMES AGAINST THE PEACE AND SECURITY OF MANKIND

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Belgium .....

GE.90-61216/3497a

BELGIUM

[Original: French]
[10 May 1990]

In reply to the request made by the Secretary-General pursuant to paragraph 3 of General Assembly resolution 44/32 entitled "Draft Code of Crimes Against the Peace and Security of Mankind" seeking the views of the Belgian Government regarding the conclusions contained in paragraph 69 (c) (i) of the report of the International Law Commission on the work of its thirty-fifth session, the Permanent Representative of Belgium has the honour to refer to the reply transmitted on 7 July 1988 concerning the Draft Code of Crimes Against the Peace and Security of Mankind. 1/

1/ See A/43/525, p.3. The relevant paragraphs read as follows:

1. It will be possible to implement the draft Code of Crimes against the Peace and Security of Mankind only to the extent that an international judicial organization is able to impose sanctions for breaches of the norms of that Code. It is with this in mind that the International Convention on the Prevention and Punishment of the Crime of Genocide provides, in article 6, that an international criminal court should have jurisdiction for the trial of persons charged with genocide. While the principle of universal punishment, which is set forth in a number of international conventions, to some extent offsets the lack of an international criminal jurisdiction, it might be recognized that the principle of universal punishment is not the ideal solution in respect of international crime, that is so for the two following reasons.

2. Firstly, there has always been some opposition to universal punishment because it makes national tribunals responsible for judging the conduct of foreign Governments. Secondly, it is logical that a crime which constitutes a breach of international order as such should be referred to a jurisdiction which is itself the expression and guarantor of that international order. Accordingly, it is essential that the mandate of the International Law Commission include the creation of an international criminal jurisdiction.

UNITED
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A

General Assembly

Distr.
GENERAL

A/CN.4/429/Add.4
15 June 1990

Original: ENGLISH

INTERNATIONAL LAW COMMISSION
Forty-second session
Geneva, 1 May-20 July 1990

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REPLIES RECEIVED FROM GOVERNMENTS (continued) .....

Norway .....

GE.90-68257/6599A

NORWAY

[Original: English]
[29 May 1990]

The Permanent Mission of Norway to the United Nations, with reference to General Assembly resolution 44/32 of 4 December 1989, has the honour to state that in the view of the Norwegian Government, the question of determining the extent of the International Law Commission's mandate in relation to the preparation of a statute of an international criminal jurisdiction for individuals should await further clarification of the underlying substantive issues.